

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 8719 of 2006(K)

PETITIONER:

C.A. MOHAMMED KUNHI,
S/O. HASSANKUTTY, KADANGOD, KALANAD P.O.,
KASARGOD DIST., REPRESENTED BY HIS POWER OF
ATTORNEY HOLDER, MR. KALLATRA IBRAHIM, MUBARAK MANZIL
MELPARAMBA, KALANAD VILLAGE, KALANAD POST,
KASARGOD DIST.

BY ADV. SRI. IMTHIAZ AHAMED M.S.
SRI. SHIRAZ ABDULLA

RESPONDENTS:

1. THE SPECIAL TAHSILDAR (LAND ACQUISITION)
RAILWAY, KASARGOD.
2. DISTRICT COLLECTOR, KASARGOD.
3. THE DEPUTY CHIEF ENGINEER (CONSTRUCTION)
SOUTHERN RAILWAYS, KANNUR.

GOVERNMENT PLEADER SRI. L.G. SURESH BABU
R3 BY ADV. SRI. ALEXANDER THOMAS
SRI. S.K. MURALEEDHARA KAIMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE COPY OF THE POWER OF ATTORNEY EXECUTED BY
PETITIONER IN FAVOUR OF KALLATRA IBRAHIM.
- EXT.P2 TRUE COPY OF THE AWARD NO.9/2001 DATED 18.10.2001
PASSED BY THE FIRST RESPONDENT.
- EXT.P3 TRUE COPY OF THE APPLICATION DATED 3.12.2001 FILED
BEFORE THE RESPONDENT.
- EXT.P4 TRUE COPY OF THE LAWYER NOTICE DATED 6.11.2004
SENT TO THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS:

- EXT.R1(a) COPY OF THE RELEVANT PAGE OF THE NOTE FILE

//TRUE COPY//

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K.T. SANKARAN, J.

W.P. (C) .NO. 8719 OF 2006 K

Dated this the 14th day of December, 2006

JUDGMENT

The land belonging to the petitioner was acquired for the purpose of doubling the railway track from Kasaragod to Trikaripur. Award was passed on 18.10.2001. Dissatisfied with the award, the petitioner filed Ext.P3 application under Section 18 of the Land Acquisition Act for reference to Court. The first respondent, the Land Acquisition Officer, received Ext.P3 application on 12.12.2001. Since no reference was made to the Court by the first respondent, the petitioner caused to send Ext.P4 lawyer notice dated 6.11.2004. The first respondent did not send any reply to Ext.P4 notice. The prayer in the Writ Petition is for the issue of a writ of mandamus or any other appropriate writ, direction or order commanding the first respondent to refer the case

:: 2 ::

to the Land Acquisition Court as per Ext.P3. The Writ Petition is filed by the petitioner represented by his power of attorney holder. Ext.P3 application was also signed and submitted by the power of attorney holder of the petitioner on behalf of the petitioner.

2. In the counter affidavit filed by the first respondent, it is stated that she came to know of the power of attorney executed by the petitioner only when notice was received in the Writ Petition. It is admitted that Ext.P3 application was presented by the power of attorney holder of the petitioner. Ext.R1(a) note file is produced by the first respondent to show that the reference application was rejected on 10.4.2002. It is admitted that no reply was sent to Ext.P4 notice.

3. Ext.R1(a) note file kept in the office of

:: 3 ::

the first respondent shows the following endorsements:

"Submitted. Sri.Mohammed Kunhi, S/o.Hassankutty, Kalnad Village has filed a petition under Section 18 of the Kerala Land Acquisition Act for the enhancement of compensation awarded as per this award No.9/2001 dated 18.10.2001. The matter may be referred to be Sub Judge, Kasaragod.

Draft letter put up may be approved.

Sd/- S.J."

On the same date, the following endorsement was made, presumably by the Land Acquisition Officer:

"The signature of the payee in the D.Form cheque for Rs.1,49,052/- issued on 17.11.2001 and the form No.22A application differs. Hence rejected."

It is admitted in the counter affidavit that no intimation was given to the petitioner in respect of the rejection of the reference application.

4. In the reply affidavit filed by the

:: 4 ::

petitioner, the petitioner contends that a copy of the power of attorney was produced along with Ext.P3 application. At the time when the cheque was issued for the award amount, the petitioner was present in station and therefore, he put the signature for having received the cheque. However, when the application for reference was made, the petitioner was not in station and therefore, it was presented by his power of attorney holder. It is also contended that the petitioner was not heard before rejecting Ext.P3 application.

5. Section 18 of the Land Acquisition Act provides that any person interested who has not accepted the award may, by the written application to the Collector, require that the matter may be referred by the Collector for the determination of the Court. Rule 13(2) of the Land Acquisition (Kerala) Rules reads thus:

"13. Notice of award and payment:(1) ..

(2) In case the awardees or their authorised agents fail to appear and accept the award or fail to apply for a reference to court under section 18, the amount due shall be paid into the treasury as Revenue Deposit payable to the persons to whom it is respectively due and vouched for in Form 'E'. A notice intimating the deposit of the amount into the Treasury shall also be served on all the awardees and interested persons in Form No.11."

(emphasis supplied)

Rule 16 provides that the reference to Court under Section 18 shall be made by the Land Acquisition Officer in Form No.15 supported by information in the prescribed schedule in Form Nos.16 and 17. The proviso to Rule 16 provides that the reference shall be made within a period of six months from the date of receipt of the application. It is clear from Rule 13(2) that an application for reference can be filed either by the awardee or by his authorised agent. Some other provisions in the

Act would also be relevant in this context. Section 9(3) speaks of serving notice on occupier and on persons interested in the land and such notice can be served on the agent of such occupier or of such person interested. Section 12(2) of the Act states that the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. A power of attorney holder is such agent or representative. Even without the aid of Rule 13 (2), a person can be represented by his power of attorney holder, unless the presence of or the signature of the person concerned is specifically insisted under the Land Acquisition Act or any other law for the time being in force. Section 2 of the Powers-of-Attorney Act, 1882 reads as follows:

"2. Execution under power-of-attorney:- The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force."

There is no provision in the Land Acquisition Act insisting that the application for reference shall be signed and submitted personally by the awardee himself. Therefore, it can be safely held that Section 2 of the Powers-of-Attorney Act applies to the case. If so, an application for reference submitted by the power of attorney holder of the awardee cannot be rejected on the ground that the awardee has not put his signature in the application for reference.

6. It is stated in Ext.P3 application itself that the application is presented by the power of attorney holder on behalf of the awardee. Therefore, the first respondent was not justified in rejecting the application on the ground that the signature in the reference application differs from the signature in the D.Form cheque.

7. An application for reference shall be dealt with by the Land Acquisition Officer promptly as provided in the proviso to Rule 16 of the Land Acquisition Rules. If there is any defect in the application for reference, that need not always end in rejection of the application. If the defect is a curable defect, the applicant should be afforded an opportunity to cure the defect. In the application for reference, the applicant is expected to furnish several details. If a mistake

occurs therein, that does not mean that the application is liable to be rejected on that ground. An opportunity to cure the defect, provided the defect is curable, should be afforded to the applicant. Since the Land Acquisition Officer found that the signature in Ext.P3 application differed from the signature in Form D cheque, an intimation should have been given to the petitioner to explain the situation. Had such an opportunity been given, the petitioner could have explained the matter. Necessarily, the explanation if accepted, it would result in the application being entertained. If the Land Acquisition Officer takes the view that the application is liable to be rejected, an opportunity should be afforded to the applicant to explain how the application is maintainable. Rejection of an application for reference affects the civil rights of the claimant and he is entitled to be heard before rejection and

:: 10 ::

is entitled to be informed of the result of his application. Rejection of a reference application without notice to the applicant would naturally cause great prejudice to him. The first respondent was not justified at all in rejecting the application without issuing notice to the petitioner and without affording him an opportunity of being heard. Failure on the part of the first respondent in not intimating to the petitioner the rejection of the application is yet another illegality.

8. For the aforesaid reasons, I hold that Ext.R1(a) proceedings are wholly without jurisdiction and against the principles of natural justice. Ext.R1(a) is accordingly quashed. The first respondent shall consider Ext.P3 application afresh after issuing notice to the petitioner, within a period of three months. Needless to say

W.P.(C) NO.8719 OF 2006

:: 11 ::

that the petitioner is entitled to appear either in person or by duly constituted power of attorney.

The Writ Petition is allowed as indicated above.

(K. T. SANKARAN)
Judge

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